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24 FEB 1956

MEMORANDUM FOR: Deputy Director of Central Intelligence

SUBJECT : Termination of Agency Employees

In accordance with our recent discussions, we have examined current policies and procedures for the termination of Agency employees, in order to develop conclusions and recommendations for improvement.

I. Background

1. In the historical development of policies and procedures for terminating Agency employees, that event which first occurred has always been the most important, namely the enactment by Congress in 1947 of Section 102(c) of the National Security Act. This section reads:

> "Notwithstanding the provisions of section 6 of the Act of August 24, 1912 (37 Stat. 555), or the provisions of any other law, the Director of Central Intelligence may, in his discretion, terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interests of the United States, but such termination shall not affect the right of such officer or employee to seek or accept employment in any other department or agency of the Government if declared eligible for such employment by the United States Civil Service Commission."

2. In its early days, the Agency wittingly forbore the exercise of this plenary power of the DCI. There were three principal reasons for this development:

a. The Agency was concentrating on getting organized and on recruiting the personnel to staff its organization, so that problems of terminating personnel were largely hypothetical.

b. Most of the original personnel of the Agency came from CIG, which had been governed by Civil Service provisions, and these first employees were soon joined by others whose sole governmental experience had been in departments or agencies similarly governed.

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c. There was an understandable initial reluctance to test the full powers of the DCI until the Agency had developed a competence to fulfill its mission, at least to the extent of being reasonably assured that it would be allowed to continue to exist.

3. As a result, CIA early incorporated into its own regulations, policies and procedures borrowed from standard government practices. Some of these procedures remain today. For example, it is still our policy respecting pay that:

> "Although the Agency is exempt from the provisions of the Classification Act of 1949, the Agency shall adhere to the provisions of this Act insofar as possible. Basic classification principles and compensation schedules will be followed in order to secure that employees receive equality of compensation for work performance." (CIA [redacted] "Personnel Policies," 5 November 1951, para. 4(2)) 25X1

4. As the Agency's termination policies and procedures developed, they similarly retained provisions resulting from the early practice of voluntarily borrowing from standard government routines, although we have now learned to accompany such interpretations with a statement as to the Director's plenary power, as for example:

> "Employees with veterans' preference and/or Civil Service status shall be accorded all rights and privileges granted them under existing laws and regulations, subject to authority granted the DCI under the National Security Act of 1947 and such special agreements as may conflict with such rights and privileges." (CIA [redacted]) 25X1

5. By mid-1953, it became obvious to many Agency officials that the Agency was now sufficiently established and staffed so that it was high time to re-examine whether the Agency's termination policies and procedures were sufficiently commensurate with the Director's powers. The rapid growth occasioned by Korea had ceased; the Director had imposed personnel ceilings; supervisors and Personnel officials found that termination problems were no longer hypothetical but were indeed pressing in a growing number of cases. Consequently, in August of 1953 the Acting Personnel Director requested the General Counsel for an opinion as to applicability of the Director's plenary power in a situation which, while hypothetical, stated a case as difficult as may likely to be found in regard to termination. The Personnel Director asked whether the DCI could terminate:

> "An individual, either veteran or non-veteran, determined to be surplus to the needs of an organizational element by the head of the element. All efforts by the Personnel Office to reassign the individual elsewhere in

the Agency are without success. The official record of the individual contains no unfavorable work record information but, in fact, contains favorable entries on work performed. The office declaring the individual surplus claims it cannot accommodate him under authorized positions. The Agency is not faced with a general reduction in force.

6. In a memorandum dated 25 September 1953, the General Counsel stated his opinion that the Director had the legal authority to terminate such an employee, provided that the Director was willing to certify that the termination was "necessary or advisable in the National interest," the Statutory test. In coming to this opinion, however, the General Counsel dwelt upon Congress's intent in giving the Director this power and concluded that security or loyalty cases were the major justification. He hence suggested that the Director might wish to restrict action under this power to security and loyalty cases, and perhaps to cases "where the circumstances may be peculiar to this Agency and not subject to general administrative questions."

7. Because this opinion of the General Counsel both conditioned the subsequent development of Agency's policies and also reflects a widespread current view of limitations on the Director's power, the following comments are pertinent. There is no indication that Congress, in giving the DCI the power accorded by Section 102(c) of the National Security Act, intended that the justification for the use of this power was limited to "security or loyalty cases." Congress gave this power to promote the development of an effective and efficient intelligence organization. Section 7 of the CIA Act of 1949 begins: "In the interest of the security of the foreign intelligence activities of the United States and in order further to implement the provision of Section 102(d)(3) of the National Security Act of 1947 that the DCI shall be responsible for protecting intelligence sources and methods from unauthorized disclosure," and concludes by exempting the Agency from disclosing its organization, functions, names, officials, titles, salaries, or numbers of personnel. This Congressional concern for the general security of the foreign intelligence activities is a broad and reasonable explanation of Congressional intent in giving the Director the plenary power to terminate personnel "whenever he shall deem such termination necessary or advisable in the interest of the United States." Such action would of course include "security or loyalty cases" but certainly would not be limited to such cases. It could, indeed, include the termination of merely mediocre personnel, provided that it is reasonable to conclude that the retention of mediocre personnel in CIA is inadvisable in the interest of the United States. That conclusion is reasonable. Congress indicated its intent to establish higher standards for this Agency when it legislated that CIA-terminated employees retained a right to seek or accept employment in any other department or agency of the Government if declared eligible for such employment by the United States Civil Service Commission. There remains the task of establishing a clear understanding of what is meant by "mediocre," and of providing equitable measures to assure that, prior to termination for "mediocrity," an employee is granted appropriate training and rotation opportunities.

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[redacted]

See DDCI changes →

of 23 April 1955. A proposed revision of this regulation (Tab A) is currently circulating for concurrence, accompanied by a proposed companion [redacted] (Tab B). Subject to the correction of certain deficiencies (Tab C), these regulations will be entirely adequate guides to the orderly termination of these employees these situations with their provisions. 25X1

b. Termination for two specific causes not covered by the general regulation cited above are covered as follows:

(1) Separation for entry into military service, [redacted] 25X1

(2) Separation based on adverse findings of a security hearing board, [redacted] 25X1

(These guides are adequate, but should be issued [redacted] 25X1 [redacted] 25X1

c. The activities of the permanent "Special Employee Review Board," established to handle cases of mediocre personnel, are less well known than the provisions cited above. While all Employee Review Boards are suspended from time to time

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III. Recommendations

Following notations made by DDCI

1. The Director's policy that the termination of mediocre personnel is advisable in the national interest should be made clear in the following ways:

Action: Dir Pers

a. By appropriate addition to R and [redacted] 25X1

" b. By rescinding CIA [redacted] 25X1

Action: DD/Pers [redacted] 25X1

Action: Dir Pers d. By appropriate addition to R and [redacted] ("Fitness Report") 25X1

Action: Dir Pers e. By eschewing in all forms of presentation such [illegible] statements as: "This Agency accords employees all the rights and benefits of standard government service, subject to the Director's authority." We should say: "Agency personnel are subject to the Director's authority to terminate their employment when advisable in the national interest," and then add that, in the exercise of this authority, the Agency will provide employees as many rights and privileges as are not inconsistent.

2. The procedures for implementing this policy should be made clear in the following ways:

25X1 a. [redacted] should be expanded to indicate that a permanent Employment Review Board is established to assist the DCI in the exercise of his statutory power in cases not covered by the general separation actions in [redacted] or by military or security considerations. This regulation should also state that supervisors should seek this method of termination in cases where use of the general separation actions might result in a failure to protect intelligence sources and methods from unauthorized disclosure, and in cases where the reason for termination is not any of those enumerated in the regulations on routine separation actions, but rather is one of mediocre performance. (This is not to suggest a reversion to an inflexible spelling out of the procedures of the ERB, which would be an unfortunate return to our prior practice. It is rather to provide a guide to supervisors as to the full extent of available procedures and the appropriate circumstances for their use.) 25X1

Action: Dir Pers

Action: Dir Pers b. The term "mediocre" should be formalized in an instruction to supervisors (perhaps in connection with preparing fitness reports) setting forth applicable tests and standards.

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Action: [redacted]

/s/
Lyman B. Kirkpatrick
Inspector General

The recommendations contained in Section III, [redacted] 25X1
approved and will be implemented by the Director of Personnel.
(See suggested amendments in pencil on Tab A.)

CONCUR: 25X1

/s/ [redacted]
Deputy Director
(Support)
MAY 7 1956

/s/
C. P. Cabell
Deputy Director
MAY 11 1956

Distribution: Orig 20 Feb 56
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